

1 THE HONORABLE BARBARA J. ROTHSTEIN
2
3
4
5
6
7
8
9

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 PARLER, LLC,

Case No. 21-cv-00270

11 Plaintiff,

PLAINTIFF'S MOTION FOR RULE 11
12 vs.
13 SANCTIONS
14 AMAZON WEB SERVICES, INC., and
15 Defendants.

16
17
18
19
20
21
22
23
24
25

PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS
(Case No. 2:21-cv-00270)

LAW OFFICES
CALFO EAKES LLP
1301 SECOND AVENUE, SUITE 2800
SEATTLE, WASHINGTON 98101-3808
TEL (206) 407-2200 FAX (206) 407-2224

1 I. INTRODUCTION

2 Defendants Amazon Web Services, Inc. and Amazon.com, Inc. (collectively, “Amazon”)
 3 removed this case under false pretenses. In its haste to achieve a “snap removal” before it was
 4 served, Amazon made a snap judgment when alleging this Court’s subject matter jurisdiction.
 5 Specifically, Amazon premised its Notice of Removal solely on the following purported basis for
 6 diversity jurisdiction:

7 9. Parler is a Nevada limited liability corporation with its principal place of business
 8 in Henderson, Nevada. *See* Federal Complaint ¶ 10. Parler therefore is a citizen of Nevada.

9 10. Defendants are incorporated in Delaware with their principal places of business in
 10 Seattle, Washington. *See* State Complaint ¶¶ 13, 14; Federal Complaint ¶ 11.

11 11. Because Defendants are not citizens of the same state as Parler, the parties are
 12 completely diverse.

13
 14 Amazon’s Notice of Removal, Dkt. 1, at 3. On March 11, 2021, Parler informed Amazon that the
 15 critical premise of this argument—the allegation that Parler is solely a citizen of Nevada because
 16 that is its principal place of business—was legally and factually false. Declaration of Angelo J.
 17 Calfo (“Calfo Decl.”), ¶ 11, Ex. 1 (3/11/21 Email from Angelo J. Calfo to Ambika Kumar Doran).
 18 Amazon has never disputed the falsity of this allegation—nor has Amazon identified *any* good
 19 faith basis for having made the allegation—but Amazon nonetheless refused to stipulate to remand.
 20 Calfo Decl., ¶ 20. Likewise, after Parler moved for remand, Amazon did not even try to defend
 21 the accuracy of this allegation in its opposition. *See generally* Dkt. No. 28. Instead, Amazon
 22 simply asked the Court to overlook its defective Notice of Removal and to permit jurisdictional
 23 discovery based on information contained in Parler’s corporate disclosure statement so Amazon
 24 could try to fish for a *new* basis for removal after manipulating its way into federal court with a
 25 false statement. *Id.* Moreover, Amazon’s 11th hour Motion for Leave to Amend its Notice of

1 Removal (the “Motion to Amend”) (Dkt. 33), which was filed on the last day of the Rule 11 “safe
 2 harbor” 21-day period, fails to appropriately correct Amazon’s unfounded allegations that
 3 complete diversity of jurisdiction exists. That is a serious abuse of the judicial process.

4 While Parler recognizes that sanctions under Rule 11 are an extraordinary remedy, they are
 5 necessary and justified in this case in light of Amazon’s unsupported and bad-faith factual
 6 assertions and legal contentions concerning Parler’s citizenship, and its dogged resistance to
 7 rectifying its error by stipulating to a remand.

8 It is clear that Amazon did not conduct a reasonable inquiry into the facts and the test used
 9 to determine Parler’s citizenship when it removed *less than 24 hours* after Parler filed its complaint
 10 in state court. It is equally obvious that, had Amazon conducted a reasonable inquiry, it would
 11 have understood that the allegations in its Notice of Removal were false. Amazon skipped a
 12 reasonable inquiry in its quest to obtain an accelerated “snap removal”—less than 24 hours after
 13 it became aware of Parler’s state court complaint—which is a questionable basis for defeating state
 14 court jurisdiction when the forum defendant rule would normally prevent a forum-based defendant
 15 from removing the case to federal court. In Amazon’s Response to Parler’s Amended Motion to
 16 Remand, it essentially admits that it did not conduct a reasonable inquiry into Parler’s citizenship
 17 when it alleges that “Parler controls the information that the Court needs to ascertain citizenship,”
 18 (Dkt. 28, at 4), which implies that Amazon did not possess such information when it filed its
 19 erroneous and frivolous Notice of Removal.

20 Worse, Amazon has refused to “appropriately correct” its error. Parler has offered Amazon
 21 several safe harbor opportunities to withdraw its flawed Notice of Removal and stipulate to a
 22 remand of this action to state court. Amazon has repeatedly refused. Instead, Amazon filed a
 23 Motion for Leave to Amend its Notice of Removal, belatedly alleging, on only information and
 24 belief, that Parler is not a citizen of Delaware and that therefore, complete diversity exists. But
 25 this action does not in any way remedy Amazon’s use of a false allegation to justify its snap

1 removal. Indeed, Amazon, which has the burden of surmounting the strong presumption against
 2 removal jurisdiction, openly *continues* to have no factual basis for its allegations of diversity
 3 jurisdiction whatsoever. Sanctions are necessary to correct Amazon's behavior, to compensate
 4 Parler for the resulting legal costs, and to deter Amazon from taking such speculative, unsupported,
 5 and unwarranted positions concerning the Court's jurisdiction in the future.

6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 Plaintiff Parler LLC originally brought both federal and state-based claims against AWS
 8 in this Court in a complaint filed on January 11, 2021. Case No. 2:21-cv-31-BJR, Dkt. 1 (the
 9 "Federal Action"). On the same day, Parler filed a corporate disclosure statement indicating that
 10 one of its members was from Delaware. *See id.*, Dkt. 3 at 2.

11 On March 2, 2021, at 4:27 p.m., Parler filed a complaint in the Superior Court of the State
 12 of Washington for King County (the "State Complaint") bringing solely Washington state-based
 13 claims against AWS and Amazon.com, Inc. (the "State Action"). On the same day, Parler
 14 dismissed the Federal Action. Calfo Decl. ¶ 5.

15 On March 3, 2021, Amazon filed a Notice of Removal of the State Action, 24 minutes prior
 16 to being served by Parler with the complaint in the State Action. Dkt 1. In its Notice of Removal,
 17 Amazon alleged that "Parler is a Nevada limited liability corporation with its principal place of
 18 business in Henderson, Nevada," that "Parler therefore is a citizen of Nevada," and that "this case
 19 [therefore] satisfies the complete diversity requirement because Defendants are not citizens of the
 20 same state as Parler. . . ." Dkt. 1, Notice of Removal, at 3. Both defendants acknowledge in the
 21 Notice of Removal that they are residents of both Washington and Delaware. *Id.* at 3.

22 Parler is a limited liability company. Calfo Decl. ¶ 9. Parler's corporate disclosure
 23 statement in the Federal Action—filed almost two months before Amazon's Notice of Removal—
 24 put Amazon on notice that Parler had members, one of which was a Delaware entity. Federal
 25 Action, Dkt. 3. Parler listed its members as "John Matze and NDM Ascendant LLC." *Id.* at 2. It

1 further listed NDM Ascendant LLC's members as Rebekah Mercer and the Rebekah Mercer 2020
 2 Irrevocable Trust. *Id.* at 2.

3 Amazon's Notice of Removal failed to identify the citizenship of all of Parler's members,
 4 as required by LCR 101(f). Instead, Amazon applied a citizenship test for ordinary corporations
 5 in its Notice of Removal, rather than for limited liability companies. Notice of Removal, Dkt. 1
 6 at 3. Amazon compounded its error in assuming Parler's status as an ordinary corporation when
 7 it cited several standards for determining the citizenship of such a corporation, rather than an LLC.
 8 It cited 28 U.S.C. §1332 for the proposition that "a *corporation* shall be deemed to be a citizen of
 9 every State . . . by which it has been incorporated and of the State . . . where it has its principal
 10 place of business." Dkt. 1 at 3 (emphasis supplied). But Amazon was obviously fully aware that
 11 Parler, LLC is in fact an LLC, not an ordinary corporation.

12 Following Amazon's Notice of Removal, counsel for Parler conferred with counsel for
 13 Amazon to address Amazon's erroneous assertion of complete diversity, during which counsel for
 14 Amazon acknowledged that its Notice of Removal applied the wrong standard for determining
 15 Parler's citizenship. Calfo Decl., ¶¶ 14, 15, and 16 & Ex.'s 2 and 3. Since then, Parler has
 16 demanded on at least 3 separate occasions via emails on March 11, 13 and 18, 2021, respectively,
 17 that Amazon stipulate to remand. *Id.* at ¶ 17. On April 7, 2021, counsel for Parler also wrote a
 18 letter to counsel for Amazon concerning potential Rule 11 sanctions requesting again that Amazon
 19 stipulate to a remand or provide an explanation for its claimed basis of diversity jurisdiction. Calfo
 20 Decl. Ex. 4.

21 To date, Amazon has refused to stipulate to remand, and on April 12, 2021, Amazon
 22 opposed Parler's amended motion for remand. *See* Dkt. 28, Resp. to Am. Mot. to Remand (the
 23 "Response"). Amazon's Response did not provide any facts substantiating its erroneous claim that
 24 Parler is solely a citizen of Nevada and that complete diversity of jurisdiction exists. Indeed,
 25 Amazon does not even try to argue that its Notice of Removal was accurate. Instead, Amazon

1 sought leave to issue discovery in order to try to fish for information on which it might try to base
 2 a *new* theory for diversity jurisdiction. Dkt. 28, 5-8, 15.

3 On April 30, 2021, Parler served Amazon with a draft of its Motion for Rule 11 sanctions.
 4 Calfo Decl., ¶ 19. On May 21, 2021, two and a half months after filing its Notice of Removal,
 5 Amazon filed a Motion for Leave to Amend Notice of Removal (Dkt. 33), to remove its erroneous
 6 allegation that Parler was solely a Nevada citizen, instead alleging “on information and belief” that
 7 “Parler is neither a citizen of Delaware nor Washington.” Dkt. 33, 11:14. But Amazon’s motion
 8 does not even try to correct its unsupported statement that “complete diversity of citizenship
 9 exists.” *Id.*, 11:9-10. Instead, Amazon decided to double down on that allegation notwithstanding
 10 the absence of a good faith basis for its assertion.

11 III. LEGAL STANDARD

12 Fed. R. Civ. Proc. Rule 11 provides:

13 “**(b) Representations to the Court.** By presenting to the court a pleading, written
 14 motion, or other paper . . . an attorney . . . certifies that to the best of the person’s
 15 knowledge, information and belief, formed *after an inquiry reasonable under the
 circumstances*: . . . (2) the . . . legal contentions are warranted by existing law . . .
 [and] (3) the factual contentions have evidentiary support[.]”

16
 17 If Rule 11(b) is violated, the district court may impose an appropriate sanction. *See* Fed. R. Civ.
 18 P. 11(c); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Rule 11 is intended to be
 19 applied vigorously to curb the filing of documents that are frivolous, legally unreasonable, or
 20 without factual foundation. *United Ass’n of Journeymen & Apprentices of Plumbing & Pipefitting
 Indus., Loc. No. 32 v. Lockheed Shipbuilding Co.*, 1986 WL 15664, at *3 (W.D. Wash. Oct. 17,
 21 1986). As another district court in this Circuit has observed, “Rule 11 is governed by an objective
 22 standard of reasonableness.” *William Villa v. Heller*, 885 F. Supp. 2d 1042, 1055 (S.D. Cal. 2012)
 23 (citing *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir. 1986), *abrogated on other
 grounds by Cooter & Gell v. Hartmarx, Corp.*, 496 U.S. 384 (1990)).

1 **IV. ARGUMENT**

2 **A. Amazon's Allegations of Parler's Citizenship Are Frivolous Because Amazon Does**

3 **Not have a Legal or Factual Basis for Alleging Parler's Citizenship**

4 In seeking removal, Amazon—not Parler—bears the burden of establishing that diversity

5 jurisdiction exists. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). In Amazon's

6 response to the Amended Motion for Remand, it put the cart before the horse when it argued that

7 "Parler's remand motion lacks the information necessary for the Court to make [a determination

8 that there is no diversity jurisdiction]." Dkt. 28, at 5. In reality, because Amazon lacked such

9 information, it did not have a good faith basis for removal in the first place.

10 Precedent is unambiguous on that point. As the Supreme Court has held, "Defendants may

11 remove an action on the basis of diversity of citizenship [only] if there is complete diversity

12 between *all* named plaintiffs and *all* named defendants, and no defendant is a citizen of the forum

13 State." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 (2005) (emphases added). Further, "the

14 plaintiff is the master of his complaint." *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th

15 Cir. 2009) (citation and quotation marks omitted). Accordingly, federal courts should apply a

16 "strong presumption against removal jurisdiction," which "means that *the defendant always has*

17 *the burden of establishing that removal is proper*, and that the court resolves all ambiguity in favor

18 of remand to state court." *Id.* (emphasis added); *see also Naxos, LLC v. Am. Fam. Ins. Co.*, 2018

19 WL 11152150, at *1 (W.D. Wash. Sept. 19, 2018) ("The removal statute is strictly construed

20 against removal jurisdiction, and a removing defendant bears the burden of establishing grounds

21 for federal subject matter jurisdiction in the case.").

22 This is because federal courts are courts of limited jurisdiction that do not lightly assume

23 the authority to resolve disputes. By admitting that it lacks the information "necessary for the

24 Court to make [a determination that there is diversity jurisdiction]," Amazon has effectively

1 conceded that it did not have the information to allege that diversity jurisdiction existed in the first
 2 instance.

3 Amazon not only has failed to meet its burden of establishing diversity jurisdiction—it has
 4 removed based on diversity jurisdiction *without a good faith basis*. The Ninth Circuit has held
 5 that a party may be sanctioned for filing in federal court absent a factual foundation for subject
 6 matter jurisdiction. *See Orange Production Credit Ass'n v. Frontline Ventures, Ltd.*, 792 F.2d
 7 797, 801 (9th Cir. 1986). Ninth Circuit precedent is clear that the current incarnation of Rule 11
 8 no longer requires “subjective bad faith” to warrant sanctions. *Id.* at 800 (cleaned up). On the
 9 contrary, “[s]anctions under Rule 11 are appropriate when a pleading which has been filed is
 10 frivolous, legally unreasonable, or without factual foundation.” *Id.* (cleaned up). And, of course,
 11 “[t]he fact that the district court lacked jurisdiction to consider the merits of the case did not
 12 preclude it from imposing sanctions.” *Id.* at 801 (cleaned up).

13 As Amazon knows well, the test for determining citizenship of an LLC is to determine the
 14 citizenship of its owners/members. *Tylt, Inc. v. Wireless Advocs., LLC*, 2020 WL 1286174, at *1
 15 (W.D. Wash. Mar. 18, 2020). Indeed, LCR 101(f) requires a removing party to allege the
 16 citizenship of all of the members of an LLC:

17 If the removal is based on diversity, the notice of removal must also, to the extent
 18 possible, identify the citizenship of the parties, and, if any of the parties is a limited
 19 liability corporation (LLC), a limited liability partnership (LLP), or a partnership,
 establish the court’s jurisdiction.

20 Amazon did not comply with LCR 101(f) in its Notice of Removal *or* in its proposed Amended
 21 Notice of Removal. Had it done so, it would have been obvious on its face that removal was
 22 improper.

23 Further, Amazon has repeatedly been put on notice that Parler had several members
 24 through the Corporate Disclosure statement that was filed in the original Federal Action. Pl.’s
 25 Corporate Disclosure Statement, Federal Action, Dkt. 3, at 2. Remand would have been

1 appropriate on this basis *alone*. *See, e.g.*, *Naxos*, 2018 WL 11152150, at *1 (where notice of
 2 removal did not allege the citizenship of all the LLC’s members, ordering the defendant to produce
 3 such information within 14 days or the case would be remanded). Everything else merely fortifies
 4 the conclusion that Amazon acted in bad faith.

5 Indeed, more than two months before filing its Motion to Amend, Amazon conceded to
 6 counsel that it used the wrong test to determine Parler’s citizenship. During a March 11, 2021,
 7 meet and confer with Amazon’s counsel, in which counsel for Parler asked counsel for Amazon
 8 to explain the inquiry it conducted prior to filing its Notice of Removal, Amazon’s counsel
 9 conceded it had not applied the right test for determining Parler’s citizenship. Calfo Decl., ¶ 14,
 10 16. Amazon’s counsel also wrote to counsel for Parler acknowledging that an LLC’s citizenship
 11 is determined by the citizenship of its members. *Id.*, Ex. 3. Yet, Amazon has not produced any
 12 facts that establish there is complete diversity of citizenship, despite numerous requests and a 21-
 13 day safe-harbor period. *Id.*, ¶ 21.

14 Notably, although it had no burden to do so, Parler has produced facts through its Corporate
 15 Disclosure Statement that establish that Amazon and Parler share common citizenship in
 16 Delaware—and thus, there is not complete diversity. One of Parler’s members is NDM Ascendant
 17 LLC, a Delaware limited liability company. Dkt. No. 15, ¶ 3. In turn, NDM Ascendant LLC’s
 18 citizenship is determined by the citizenship of its members, which include the Rebekah Mercer
 19 2020 Irrevocable Trust (the “Trust”), which was formed under the laws of Delaware. *See id.* ¶ 4.
 20 And, for diversity purposes, the citizenship of a traditional trust, such as the Trust, is similarly
 21 determined by the citizenship of its trustees. *GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*,
 22 888 F.3d 29, 34 (3d Cir. 2018) (citing *Americold Realty Tr. v. Conagra Foods, Inc.*, 577 U.S. 378
 23 (2016)). As Parler’s Corporate Disclosure Statement makes clear, one of the trustees of the Trust
 24 is the J.P. Morgan Trust Company of Delaware, a company headquartered and incorporated in
 25 Delaware, making it a citizen of Delaware. *See* Calfo Decl. ¶ 4. At the time this action was

1 commenced (and now), the Trust was a Delaware citizen, which made NDM Ascendant LLC a
 2 Delaware citizen, which in turn made Parler a Delaware citizen. *See, e.g., Grupo Dataflux v. Atlas*
 3 *Global Group, L.P.*, 541 U.S. 567, 570 (2004) (“the jurisdiction of the Court depends upon the
 4 state of things at the time of the action brought”) (quotation marks and citation omitted). Since
 5 Delaware is a common state of citizenship between Parler and the Defendants, complete diversity
 6 is absent, and the Court lacks jurisdiction. *See Wescott v. Upshaw*, 2020 WL 3469362, at *2 (W.D.
 7 Wash. June 25, 2020) (“As Plaintiff and one Defendant are citizens of the same state, there is not
 8 complete diversity and this Court lacks jurisdiction to hear this case.”).

9 In sum, Amazon never had any factual or legal basis for alleging in its removal papers that
 10 (1) Parler is not a Delaware citizen, or (2) that there is complete diversity. Sanctions are necessary
 11 and appropriate here, in light of Amazon’s flagrant decision to remove based on incomplete and
 12 false allegations, as well as its subsequent and recalcitrant refusal to stipulate to remand or
 13 “appropriately correct” its allegations of jurisdiction when the falsity of those allegations was
 14 pointed out.

15 **B. Amazon Did Not Conduct a Reasonable Inquiry Before Filing Its Notice of Removal**

16 The need for sanctions is particularly clear in the context of Amazon’s “snap removal”
 17 tactics. Amazon rushed to file its Notice of Removal before it was served by Parler, less than 24
 18 hours after Parler filed its complaint in the State Action. Amazon obviously knew that, if it waited
 19 and found a basis for diversity jurisdiction through discovery in state court, it would no longer be
 20 able to remove in light of the forum-defendant rule. As a result, Amazon knowingly chose to file
 21 its Notice of Removal *without a reasonable inquiry* in the rush to get into federal court before it
 22 was served with the state court complaint.

23 The Ninth Circuit, moreover, has held that a failure to conduct a reasonable investigation
 24 of a party’s domicile can result in Rule 11 sanctions. *See, e.g., Hendrix v. Naphtal*, 971 F.2d 398,
 25 399 (9th Cir. 1992) (where plaintiff’s counsel failed to investigate client’s domicile and plaintiff

1 had moved his domicile to a state that destroyed complete diversity). As explained above, a
 2 reasonable inquiry would have revealed that Parler is a limited liability company, not a
 3 corporation. In fact, a reasonable inquiry was not even needed—Amazon was already fully on
 4 notice of that fact. Complaint, Federal Action, Dkt. 1, at 3-4; Pl.’s Corporate Disclosure Statement,
 5 Federal Action, Dkt. 3, at 2.

6 A reasonable inquiry also should have revealed the proper test for determining the
 7 citizenship of a limited liability company. It is long-standing, black-letter law that the citizenship
 8 of an LLC is determined by the citizenship of its members. *See, e.g., Johnson v. Columbia Props.*
Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006). Moreover, this principle is embedded in this
 10 District’s local rules, including LCR 101(f)’s requirement that a removing defendant allege the
 11 citizenship of each member of a limited liability company—with which Amazon did not comply.
 12 *See infra*, at 7. It is therefore unsurprising that, when Parler confronted Amazon about the lack of
 13 a good faith basis for its allegations regarding citizenship, Amazon did not try to defend them.
 14 Calfo Decl., ¶¶ 17, 19, and 20. What is surprising, however, is Amazon’s subsequent refusal to
 15 stipulate to remand. Amazon’s brazen decision to stand on its *admittedly* false Notice of
 16 Removal—in which it included knowingly or recklessly false information for the sole purpose of
 17 beating Parler to the punch with its “snap removal”—and then unfounded jurisdictional allegations
 18 on information and belief in its proposed amended notice of removal, makes sanctions particularly
 19 necessary and appropriate here.

20 **D. Amazon’s Proposed Amended Notice of Removal Fails to “Appropriately Correct”
 21 Its Jurisdictional Allegations**

22 On May 21, 2021, Amazon filed its Motion to Amend, explicitly stating that it was seeking
 23 to obtain “safe harbor” from this Rule 11 motion. Dkt. 33. But Fed. R. Civ. P. Rule 11(c)(2)
 24 provides a “safe harbor” for litigants only “if the challenged paper, claim defense, contention, or
 25 denial *is withdrawn or appropriately corrected* within 21 days after service. . . .” (emphasis added).

1 In its proposed amended notice of removal that is attached to its Motion to Amend, Amazon
 2 revised its allegations from the erroneous statement that Parler was solely a citizen of Nevada to
 3 the unfounded allegation that Parler was “not a citizen of Delaware” and that complete diversity
 4 existed. In other words, Amazon affirmatively decided to *stand on* its unfounded contention that
 5 there is complete diversity of citizenship, alleging on “information and belief” that Parler is “not
 6 a citizen of Delaware.” Dkt. 33, 11. Yet Amazon offers no supporting facts to support its
 7 contention that Parler is “not a citizen of Delaware,” and Amazon continues to flout the
 8 requirement to affirmatively plead the Parler’s citizenship pursuant to LCR 101(f). Given that
 9 removal jurisdiction is strictly construed, and the fact that Parler has already alleged its Delaware
 10 citizenship, Amazon has failed to rectify its sanctionable conduct by filing its belated and
 11 unsupported Motion to Amend. *See EB-Bran Productions, Inc. v. Warner Elektra Atlantic, Inc.*,
 12 2006 WL 932085 (E.D. Mich. 2006) (awarding sanctions after objectionable conduct described in
 13 defendants’ Rule 11 motion was not appropriately corrected by plaintiff’s amended complaint).

14 In short, by filing its Motion to Amend, Amazon again concedes that the original
 15 allegations in its removal notice were false and made without appropriate investigation. Amazon
 16 also concedes in its Motion to Amend that Parler demanded that Amazon cure its Rule 11 violation
 17 by withdrawing its Notice of Removal, which contained a false allegation, and stipulate to a
 18 remand. Dkt. 33, 4:13-17. Instead of stipulating to a remand, Amazon’s Motion to Amend seeks
 19 to leverage the false statement it made in its Notice of Removal to obtain discovery that it
 20 speculates might provide it another basis for removal that it could not have known existed at the
 21 time of the original removal because it had no knowledge that a trust’s citizenship was an issue—
 22 it failed to perform the investigation necessary to make that determination. If it were to be
 23 successful in this effort, Amazon would achieve “snap removal” based on a knowingly false
 24 allegation, and then would be permitted to make arguments to stay in federal court based on new
 25 allegations that it discovered *after* it was served with the Complaint. Amazon’s proposal to take

1 advantage of its Rule 11 violation to obtain discovery seeking to remain in federal court should
 2 not be considered a way of obtaining “safe harbor” from this Rule 11 motion.

3 **E. Amazon Should Be Sanctioned by a Penalty Sufficient to Deter Repetition**

4 Fed. R. Civ. P. 11(c)(4) allows a court wide latitude to fashion an appropriate sanction for
 5 Amazon’s conduct, but the sanction imposed should be sufficient “to deter repetition of the
 6 conduct or comparable conduct by others similarly situated.” The Rule defines different types of
 7 sanctions that can be applied to achieve the deterrent effect: nonmonetary directives, an order to
 8 pay a penalty to the court, or an order directing payment to the movant of all the reasonable
 9 attorney’s fees and other expenses incurred directly resulting from the violation. Fed. R. Civ. P.
 10 11(c)(4).

11 Here, it would be appropriate for the court to sanction Amazon by awarding Parler all the
 12 reasonable attorney’s fees and other expenses incurred as a result of Amazon’s frivolous Notice of
 13 Removal—*i.e.*, all of the fees and costs that Parler has incurred in litigating this case in federal
 14 court, since Amazon removed. *See Breckenridge Prop. Fund 2016, LLC v. Eriks*, 2018 WL
 15 4772085, at *4 (W.D. Wash. Oct. 3, 2018) (court awarded fees and costs due to improper removal
 16 and set briefing schedule for plaintiff’s fee petition).

17 **V. CERTIFICATION OF COMPLIANCE WITH FRCP 11(c)(2) AND CONFERRAL**

18 Parler has complied with the “safe harbor” provision under Fed. R. Civ. Proc. 11(c)(2) by
 19 serving Amazon’s counsel with a draft of this motion 21 days prior to filing, on April 30, 2021.
 20 Calfo Decl., ¶ 19. In the draft Rule 11 Motion that was served on Amazon’s counsel, Parler
 21 challenged two of Amazon’s contentions, claiming that they violated Rule 11(b): (1) that Parler
 22 was not solely a citizen of Nevada, and (2) that complete diversity existed. *Id.* In addition, Parler’s
 23 counsel previously demanded that Amazon withdraw its Notice of Removal and agree to remand
 24 on two other occasions. *Id.* at ¶ 16. As of the date of filing this motion, Amazon has refused to
 25 withdraw or amend its Notice of Removal to correct all of the contentions challenged by Parler.

Pursuant to the Court's Standing Order on all Civil Cases, Section II(C), the parties met and conferred concerning this motion on March 12, 2021 to discuss the substance of this motion. Calfo Decl., ¶ 12, 20. Angelo Calfo, Andrew DeCarlow, and Henry Phillips from Calfo Eakes LLP and Ambika Kumar and Alonzo Wickers from Davis Wright Tremaine LLP attended the conference via Zoom video. *Id.* Following the meeting, the parties exchanged emails and correspondence on this same subject matter. On April 30, 2021, the parties agreed that their meet and confer obligations had been met. *Id.* Prior to Amazon's filing of its Motion to Amend, the parties also met and conferred by email as set forth in the Declaration of Ambika K. Doran in Support of Motion for Leave to Amend Notice of Removal (Dkt. 34). *Id.*

VI. CONCLUSION

For these reasons, Parler requests that this Court award an appropriate sanction against Amazon pursuant to Fed. R. Civ. P. 11(c) sufficient to deter Amazon and other parties from filing (or standing on) notices of removal containing knowingly or recklessly false information. These sanctions should include, at a minimum, all fees and costs incurred by Parler in connection with Amazon's removal to federal court and in bringing this instant motion.

DATED this 28th day of May, 2021.

CALFO EAKES LLP

By /s/Angelo J. Calfo
 Angelo J. Calfo, WSBA # 27079
 1301 Second Avenue, Suite 2800
 Seattle, WA 98101
 Phone: (206) 407-2200
 Fax: (206) 407-2224
 Email: angeloc@calfoeakes.com

DAVID J. GROESBECK, P.S.

David J. Groesbeck, WSBA # 24749
1333 E. Johns Prairie Rd.
Shelton, WA 98584
Phone: (509) 747-2800
Email: david@groesbecklaw.com

SCHAERR |JAFFE LLP

Gene C. Schaerr (*pro hac vice application to be submitted*)
H. Christopher Bartolomucci (*pro hac vice application to be submitted*)
1717 K Street NW, Suite 900
Washington, DC 20006

Counsel for Plaintiff Parler LLC

PLAINTIFF'S MOTION FOR RULE 11 SANCTIONS
(Case No. 2:21-cv-00270) - 14

LAW OFFICES
CALFO EAKES LLP
1301 SECOND AVENUE, SUITE 2800
SEATTLE, WASHINGTON 98101-3808
TEL (206) 407-2200, FAX (206) 407-2224